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Countrywide Home Loans, Inc. dba America's
Wholesale Lender, BAC Home Loans Servicing,
LP, and Mortgage Electronic Registration
Systems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JIM B. KIMBALL,

Plaintiff,

VS.

AMERICA'S WHOLESALE LENDER;
COUNTRYWIDE HOME LOANS, INC.; BAC
HOME LOAN SERVICING, LP, and
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS; and DOES 1-10,

Defendant.

Case No. CV10-05670

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS**

[Fed. R. Civ. Proc. 12(b)(6)]

[Filed concurrently with [Proposed] Order and Motion to Dismiss]

Date: June 16, 2011
Time: 1:30 p.m.
Place: Dept. 4

First Amended FAC Filed: March 4, 2011
Honorable Lucy Koh

Defendants Countrywide Home Loans, Inc., BAC Home Loan Servicing, LP, and Mortgage Electronic Registration Systems (collectively “Defendants”) request that the Court take judicial notice of true and correct copies of the following documents in connection with the Motion to Dismiss the Complaint of Plaintiff Jim B. Kimball:

- **Exhibit A:** Deed of Trust, related to property located at 1720 Grace Ave, San Jose, California 95125, dated July 14, 2005, recorded August 4, 2005 in Santa Clara County, which appears to be signed by Plaintiff.
- **Exhibit B:** Deed of Trust, related to property located at 1720 Grace Ave, San Jose, California 95125, dated July 14, 2005, which appears to be signed by Plaintiff.
- **Exhibit C:** Notice of Default, related to property located at 1720 Grace Ave, San Jose, California 95125, dated August 2, 2010
- **Exhibit D:** Notice of Trustee's Sale, related to property located at 1720 Grace Ave, San Jose, California 95125.

Pursuant to Federal Rule of Evidence 201, the court may take judicial notice of adjudicative facts, which are “either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Federal Rule of Evidence 201(b).

Notably, the Court may “take judicial notice of facts that are a matter of public record.” *Hefner v. Chao*, Civil No. 08cv1586 L (BLM), 2009 U.S. Dist. LEXIS 70314, *3 (S.D. Cal. August 11, 2009); *Lee v. City of Los Angeles*, 250 F. 3d 668, 689 (9th Cir. 2001); *Mack v. South Bay Beer Distrib.*, 798 F. 2d 1279, 1282 (9th Cir. 1986) (*overruled in part on other grounds by Astoria Federal Sav. and Loan Ass'n v. Solimino*, 501 U.S. 104 (1991)).

In addition, “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v. Tunnell*, 14 F. 3d 449, 454 (9th Cir. 1994) *overruled in part on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (“[A] document is not ‘outside’ the complaint if the complaint specifically refers to the document and if its authenticity is not questioned”; a court may properly consider such document in ruling on a motion to dismiss). A court may also take judicial notice of facts “capable of accurate and ready determination” by reliable sources. *See* Fed. Rules Evid. 201(b); *see also United States v. Mariscal*, 285 F.3d 1127, 1131 (9th Cir. 2002).

Accordingly, the Court may take judicial notice of the Deeds because they are specifically referenced in Plaintiffs' Complaint and because there is no dispute regarding the existence or authenticity of these documents. *See, e.g.*, FAC ¶ 5. Furthermore, Exhibits C and D are a matter of public record.

DATED: April 1, 2011

By /s/ Matthew J. Brady
Attorney for Defendants
Countrywide Home Loans, Inc. dba America's
Wholesale Lender, BAC Home Loans Servicing, LP,
and Mortgage Electronic Registration Systems, Inc.

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